

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF WISCONSIN

\* \* \* \* \*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

Case No. 16-CR-103-JDP-1

PATRICK S. SWEENEY,

Madison, Wisconsin

July 21, 2017

Defendant.

1:00 p.m.

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STENOGRAPHIC TRANSCRIPT OF PLEA HEARING  
HELD BEFORE CHIEF JUDGE JAMES D. PETERSON

APPEARANCES:

For the Plaintiff:

Office of the United States Attorney

BY: MEREDITH P. DUCHEMIN

AARON WEGNER

Assistant United States Attorneys

222 West Washington Avenue, Suite 700

Madison, Wisconsin 53703

For the Defendant:

Christopher T. Van Wagner

BY: CHRISTOPHER T. VAN WAGNER

110 East Main Street, Suite 705

Madison, Wisconsin 53703

Also Present:

Patrick S. Sweeney, Defendant

Marc Stieve, U.S. Probation Officer

CHERYL A. SEEMAN, RMR, CRR  
Official Court Reporter  
United States District Court  
120 North Henry Street, Room 410  
Madison, Wisconsin 53703  
1-608-261-5708

1 (Called to order at 1 p.m.)

2 THE CLERK: Case No. 16-CR-103-JDP-1, *United*  
3 *States of America v. Patrick S. Sweeney*. Court is called  
4 for a plea hearing. May we have the appearances, please?

5 MS. DUCHEMIN: Good afternoon, Your Honor.  
6 Meredith Duchemin and Aaron Wegner on behalf of the United  
7 States.

8 THE COURT: Ms. Duchemin and Mr. Aaron Wegner,  
9 good afternoon.

10 MR. VAN WAGNER: Your Honor, Chris Van Wagner  
11 appearing in person with Patrick Sweeney.

12 THE COURT: Mr. Sweeney, Mr. Van Wagner, good  
13 afternoon to you.

14 MR. VAN WAGNER: Good afternoon. Thank You.

15 THE COURT: We are here for a plea hearing based  
16 on a written plea agreement that was signed I think  
17 yesterday and it has been provided to the Court.

18 Mr. Van Wagner, have you and Mr. Sweeney received a  
19 copy of the superseding indictment?

20 MR. VAN WAGNER: We have, Your Honor.

21 THE COURT: Would you like it read?

22 MR. VAN WAGNER: We would waive a formal reading  
23 of it.

24 THE COURT: All right. Very good. Let me ask  
25 Ms. Duchemin and Mr. Wegner to tell me the penalties that

1 Mr. Sweeney would face if he were convicted.

2 MS. DUCHEMIN: Yes, Your Honor. I believe  
3 Mr. Sweeney is prepared to enter a guilty plea to Count 2  
4 of the superseding indictment. That count charges a  
5 violation of Title 18, United States Code, Section 152  
6 (3). The maximum penalties for that offense are five  
7 years in prison, a \$250,000 fine, three-year period of  
8 supervised release, a \$100 criminal assessment penalty,  
9 plus the possibility of restitution.

10 THE COURT: Okay. And do we have an idea what  
11 the restitution amount is going to be?

12 MS. DUCHEMIN: No, Your Honor.

13 THE COURT: Okay. All right. So,  
14 Mr. Van Wagner, have you had enough time to talk with  
15 Mr. Sweeney about the charges he faces, the penalties that  
16 might result, and whether he has any defenses?

17 MR. VAN WAGNER: Yes, I have.

18 THE COURT: Very good. Mr. Sweeney, my  
19 understanding is you want to enter a plea today. Is that  
20 right?

21 THE DEFENDANT: That's correct, Your Honor.

22 THE COURT: All right. Before you do that, the  
23 purpose of our hearing is to make sure that you're capable  
24 of proceeding today and that your entry of a plea is  
25 actually fully voluntary, that it's done understanding the

1 charges and the penalties involved, and also that there's  
2 a factual basis for the plea, which means that there's  
3 reason for me to believe that you're actually guilty  
4 before I let you plead guilty.

5 So I'm going to have to ask you some questions that  
6 you'll have to answer under oath. So I'm going to ask you  
7 to stand up, raise your right hand, and the clerk is going  
8 to swear you to tell the truth.

9 **PATRICK S. SWEENEY, DEFENDANT, SWORN**

10 THE COURT: All right. Very good. Okay. My  
11 first few questions are to make sure that your plea is  
12 voluntary and that you're capable of proceeding today.  
13 Let's begin by having you tell me how old you are.

14 THE DEFENDANT: I'm 62, Your Honor.

15 THE COURT: 62. And tell me how much formal  
16 education you've had.

17 THE DEFENDANT: I have a four-year college  
18 undergraduate degree, a three-year law degree, and a  
19 one-year degree at an LOM program.

20 THE COURT: Okay. This may seem like a formality  
21 to ask you this, but do you think you were able to read  
22 and understand the plea agreement before you signed it?

23 THE DEFENDANT: I do, Your Honor.

24 THE COURT: All right. Very good. Let's find  
25 out if there's any reason that you might have trouble

1 participating today. Are you suffering from any physical  
2 or mental illness?

3 THE DEFENDANT: Not that would effect anything I  
4 would say here, Your Honor.

5 THE COURT: Okay. Well, let's just break it down  
6 a little bit. Are you suffering from any mental illness?

7 THE DEFENDANT: I have a mental health condition  
8 diagnosed.

9 THE COURT: Okay. Let's talk a little -- we  
10 don't need to go into great detail, but I looked at the  
11 preservices report. I believe that you have some issues  
12 with depression and anxiety. Is that right?

13 THE DEFENDANT: Correct.

14 THE COURT: Okay. Are you on any medication for  
15 those?

16 THE DEFENDANT: I am.

17 THE COURT: Okay. Would those medications  
18 interfere with your ability to understand what people tell  
19 you --

20 THE DEFENDANT: No, sir.

21 THE COURT: -- or your ability to make good  
22 decisions?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Okay. Let's deal with the physical  
25 issues that you might have. Are you suffering from any

1 physical conditions?

2 THE DEFENDANT: Diabetes 2.

3 THE COURT: Okay. And do you take medication for  
4 that?

5 THE DEFENDANT: I do, Your Honor.

6 THE COURT: Okay. And does that medication  
7 interfere with your ability to understand what people tell  
8 you or your ability to make good decisions?

9 THE DEFENDANT: It does not.

10 THE COURT: Very good. All right. Are you  
11 addicted to drugs or alcohol?

12 THE DEFENDANT: I am not.

13 THE COURT: Okay. Are you so tired that you  
14 wouldn't be able to follow what we're doing today?

15 THE DEFENDANT: I am not.

16 THE COURT: All right. Fine. And are you under  
17 the influence of any drugs or alcohol today other than the  
18 medications that we discussed?

19 THE DEFENDANT: I am not.

20 THE COURT: Good. All right. Mr. Sweeney, do  
21 you think that you've had enough time to talk with  
22 Mr. Van Wagner about the nature of the charges that you  
23 face?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Okay. And have you talked about the

1 facts that the government thinks it could prove if this  
2 case were to go to trial?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And have you talked about whether you  
5 have any defenses to the charges?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Finally, have you talked about the  
8 United States sentencing guidelines and how they might  
9 affect the sentence you might receive?

10 THE DEFENDANT: Yes.

11 THE COURT: Good. If you would just tell me, in  
12 your own words, what you think you're being charged with.

13 THE DEFENDANT: Count 2 is a bankruptcy fraud,  
14 which has the elements of something like I was involved  
15 and filed a Chapter 11 in the Western District of  
16 Wisconsin. As a result of that, I submitted papers that  
17 listed all of my debts and what kind of debts they were.  
18 It said other things, but it certainly said those. And I  
19 put down the loans to the partnerships that I was the  
20 manager of as loans, but I understand that there was  
21 evidence that will be submitted and it will be sufficient  
22 to say that I should have put something else like  
23 *embezzlement* on those.

24 THE COURT: All right. All right. At this  
25 point -- we're going to revisit that in a few minutes --

1 but at this point you're satisfied that you understand the  
2 charges that you're facing. Let me make sure that you  
3 understand the penalties. You understand if I accept your  
4 plea and adjudge you guilty, you could be subject to the  
5 penalties up to the maximum that Ms. Duchemin reviewed?  
6 And that means that you could be subject to a term of  
7 imprisonment up to five years; do you understand that?

8 THE DEFENDANT: Yes, I do, Your Honor.

9 THE COURT: And you're subject to a fine of up to  
10 \$250,000?

11 THE DEFENDANT: I understand that as well.

12 THE COURT: Okay. You will face a mandatory \$100  
13 criminal assessment penalty?

14 THE DEFENDANT: Yes, I'm aware of that.

15 THE COURT: Any period of incarceration could be  
16 followed by a period of supervised release of up to three  
17 years.

18 THE DEFENDANT: I understand that as well.

19 THE COURT: And that period of supervised release  
20 would be subject to certain conditions and restrictions  
21 that I would impose. And if you violated any of those  
22 conditions or restrictions, you can be sent back to prison  
23 for violating them; do you understand that?

24 THE DEFENDANT: I sure do, yes.

25 THE COURT: Also, this is a case in which there



1 is a victim who suffered a financial loss and so you will  
2 be subject to an order of restitution; do you understand  
3 that?

4 THE DEFENDANT: There's a possibility of that.

5 THE COURT: Yes.

6 THE DEFENDANT: I do understand.

7 THE COURT: Okay. And I guess we don't know what  
8 that restitution amount is yet, but you will either agree  
9 on it with the government before your sentencing, and if  
10 you don't agree, I'll decide what the restitution amount  
11 should be. And that might well involve having a hearing  
12 and taking some evidence and I'll settle on the  
13 restitution amount, and then that will be part of the  
14 judgment against you in this case as well; do you  
15 understand that?

16 THE DEFENDANT: I do understand.

17 THE COURT: Very good. All right. Let's talk  
18 about the federal sentencing guidelines here. We've got  
19 Mr. Stieve in the courtroom here from the probation  
20 office. And he's going to conduct an investigation and  
21 he'll compile information and present it to me in a  
22 presentence report that I will use in setting your  
23 sentence.

24 One of the things that the presentence report will do  
25 is it will calculate the sentencing range that's

1 recommended under the United States sentencing guidelines.  
2 And at this point I want to review some of the factors  
3 that go into the calculation of that guideline sentencing  
4 range.

5 So you understand that the starting point for the  
6 guidelines will be the offense level that the guidelines  
7 assign to the crime that you're thinking about pleading  
8 guilty to. Do you understand that the guidelines offense  
9 levels --

10 THE DEFENDANT: Yes, and there's different  
11 levels; I understand that.

12 THE COURT: And then other conduct relevant to  
13 your crime. And in a financial crime, the most  
14 significant part of the other conduct is not the only  
15 thing, but the most significant part is the amount of  
16 financial loss. So you understand that other conduct  
17 relevant to the offense, particularly the amount of loss,  
18 is a factor that gets considered under the guidelines?

19 THE DEFENDANT: I understand that's a factor.

20 THE COURT: Okay. Now, the fact that you've  
21 accepted responsibility by pleading guilty, assuming that  
22 there's no reason to deny you credit for accepting  
23 responsibility, that's a factor that counts in your favor  
24 under the guidelines; do you understand that?

25 THE DEFENDANT: I do.

1           THE COURT: Now, your role in the offense gets  
2 considered. If there's more than one person involved in  
3 the offense, if you have a leadership role it counts  
4 against you, if you have a minor role it might count  
5 somewhat in your favor or at least less bodily against  
6 you. And if you did anything to obstruct the  
7 investigation of your crime, that's also a factor that's  
8 considered under your role in the offense. So you  
9 understand your role in the offense is a factor that gets  
10 considered?

11           THE DEFENDANT: I understand that, Your Honor.

12           THE COURT: Okay. Your prior criminal record, if  
13 you have one, that gets considered, too; do you understand  
14 that?

15           THE DEFENDANT: I understand that.

16           THE COURT: And then I just want to make sure you  
17 understand the general perspective of the guidelines,  
18 which is to consider a broad range of factors about you  
19 and your background, your offense, and the impact of your  
20 offense on the victims and on society as a whole. You  
21 understand that the perspective is to consider a broad  
22 range of factors?

23           THE DEFENDANT: I do.

24           THE COURT: All right. Good. So let's talk  
25 about the process a little bit. The presentence report

1 will be given to me, it will be given to you and your  
2 counsel, and it will be given to the government. If  
3 there's anything in that report that you think is  
4 incomplete or incorrect or if you think the guidelines  
5 aren't calculated right, you can raise objections to the  
6 report to me; do you understand that?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: The government will have the same  
9 opportunity to make objections to the report. And at your  
10 sentencing hearing, I'll rule on any objections and make a  
11 final determination about what goes in your presentence  
12 report and about what the properly calculated guideline  
13 range is. Do you understand that process?

14 THE DEFENDANT: I understand that.

15 THE COURT: Here's the most important thing to  
16 take away: you understand that the guidelines are only  
17 advisory. I will consider them, because the law tells me  
18 I have to consider them, but I don't have to follow them.  
19 I can sentence you to a penalty that's either greater than  
20 or less than what the guidelines recommend if I think it's  
21 appropriate under the law. Do you understand that the  
22 guidelines are advisory?

23 THE DEFENDANT: I do, Your Honor.

24 THE COURT: All right. Good. Now, by pleading  
25 guilty today, you are going to give up some constitutional

1 rights that anyone who's accused of a crime has and I want  
2 to review some of those with you. So you understand you  
3 have the right to have your guilt determined by a jury?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And the jury would have twelve  
6 individuals on it and they would have to all unanimously  
7 find you guilty beyond a reasonable doubt before you could  
8 be convicted; do you understand that?

9 THE DEFENDANT: I do, Your Honor.

10 THE COURT: You understood, too, that you and  
11 Mr. Van Wagner would be able to help select the people who  
12 served on that jury?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: And you also understand that under  
15 the Constitution of the United States, nobody can be  
16 forced to admit that they've committed a crime. So you  
17 have the right to plead not guilty and to stick with that  
18 plea throughout this proceeding. Do you understand you  
19 have the right to plead not guilty?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: That right also means that if this  
22 case were to go to trial, you would have the right to not  
23 testify. You could remain silent during the trial and I  
24 would have to tell the jury that they could not hold that  
25 against you in any way. Do you understand that you have

1 that right?

2 THE DEFENDANT: I do.

3 THE COURT: Now, it's also your right, if you  
4 were to choose to do so, to testify and you could tell  
5 your side of the story. So you understand that if you so  
6 chose, you would have the right to testify?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: You'd also have the right to do what  
9 we call "confront and cross-examine the government's  
10 witnesses." That means you could confront them here in  
11 the courtroom by facing them here and you could also  
12 cross-examine them by having Mr. Van Wagner ask them  
13 questions. Do you understand that you have the right to  
14 confront and cross-examine the government's witnesses?

15 THE DEFENDANT: I do.

16 THE COURT: You would also have the right to call  
17 witnesses on your own behalf. And even if they didn't  
18 want to come here to court, you could compel their  
19 appearance by means of a subpoena. Do you understand you  
20 have the right to call and compel the attendance of  
21 witnesses?

22 THE DEFENDANT: I do.

23 THE COURT: All right. Good. So I understand  
24 this is your first felony conviction; is that right?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. A felony conviction has  
2 an impact on your rights beyond the scope of this  
3 litigation, and so I'm going to review some of the aspects  
4 of the way this conviction would affect your civil rights.  
5 So you understand under Wisconsin law, while you're  
6 serving any term of incarceration or under any form of  
7 supervision, you would not have the right to vote; do you  
8 understand that?

9 THE DEFENDANT: I do, Your Honor.

10 THE COURT: And you would not have the right to  
11 serve on a jury or the right to hold any public office; do  
12 you understand that?

13 THE DEFENDANT: I understand that.

14 THE COURT: Okay. Now, there's another important  
15 right that I want to review with you, and this will be a  
16 permanent impairment of your civil right, and that is that  
17 you would not have, as a person convicted of a felony, you  
18 would not have the right to possess any kind of firearm or  
19 even ammunition; do you understand that?

20 THE DEFENDANT: I do.

21 THE COURT: And if you did possess a firearm, or  
22 even just the ammunition, you could be charged with a new  
23 crime for doing that; do you understand that?

24 THE DEFENDANT: I do, Your Honor.

25 THE COURT: Okay. I believe you're a United

1 States citizen, so what I'm about to tell you probably  
2 doesn't apply to you, and that is that a felony conviction  
3 could affect your residency status or affect your  
4 immigration status, which could result in tendencies,  
5 including your deportation from the United States. I want  
6 you to be aware of that, but I believe you're a United  
7 States citizen. Isn't that right?

8 THE DEFENDANT: Yes, I am a United States  
9 citizen.

10 THE COURT: Okay. I don't think that applies to  
11 you, but I want you to be aware of it. Finally, the last  
12 point I want to make to you about your rights is that you  
13 have the right to counsel throughout all phases of this  
14 proceeding, including counsel appointed at government  
15 expense, if that's necessary. Do you understand you have  
16 the right to counsel?

17 THE DEFENDANT: Yes, I do, Your Honor.

18 THE COURT: All right. The next thing we need to  
19 do is to make sure that we all understand and agree on the  
20 terms of the plea agreement, so I'm going to ask  
21 Ms. Duchemin to review the plea agreement. And when she's  
22 done, I'm going to come back to you and Mr. Van Wagner and  
23 I'm going to ask you if you agree that's the deal you've  
24 made with the government.

25 THE DEFENDANT: Okay. Thank you.



1 THE COURT: Ms. Duchemin.

2 MS. DUCHEMIN: Thank you, Your Honor. The  
3 complete understanding of the parties is set forth in the  
4 signed plea agreement which has been e-filed with the  
5 court, as the Court has already referenced.

6 But in summary, paragraph 1 sets forth the  
7 defendant's agreement to plead guilty to Count 2 of the  
8 superseding indictment and sets forth the maximum  
9 penalties for that offense.

10 In paragraph 2 the defendant acknowledges that he's  
11 giving up certain rights by pleading guilty.

12 In paragraph 3 the defendant waives his right to  
13 appeal any sentence of 24 months or less.

14 In paragraph 4 the defendant acknowledges his  
15 understanding that the plea could have immigration-related  
16 consequences if he's not a U.S. citizen.

17 In paragraph 5 the United States is agreeing to  
18 recommend that the defendant receive the maximum available  
19 reduction for acceptance of responsibility, provided that  
20 he qualifies for it under the factors set forth in 3E1.1  
21 and has not done anything that the United States does not  
22 know about that is inconsistent with acceptance of  
23 responsibility. This recommendation is also contingent on  
24 the defendant providing a full and truthful accounting of  
25 financial information and a required financial statement.

1 The United States can withdraw the recommendation if the  
2 defendant does anything between today and sentencing  
3 that's inconsistent with acceptance.

4 In paragraph 6 the United States agrees that the  
5 guilty plea will completely resolve all possible federal  
6 criminal violations that have occurred in the Western  
7 District of Wisconsin, provided the conduct relates to the  
8 charged conduct and the criminal conduct was known to the  
9 United States at the time of the plea agreement. This  
10 agreement is limited to cases where this U.S. Attorney's  
11 Office has exclusive decision-making authority. The  
12 United States is also agreeing to dismiss the remaining  
13 counts of the superseding indictment at the time of  
14 sentencing.

15 In paragraph 7 the defendant agrees to pay  
16 restitution, the exact amount of which will be determined  
17 by the Court if the parties cannot agree.

18 In paragraph 8 the defendant acknowledges his  
19 understanding that he has to provide truthful financial  
20 information in connection with the plea and sentencing.

21 In paragraph 9 the United States reserves its rights  
22 to make arguments in support of or in opposition to the  
23 sentence imposed on appeal.

24 In paragraphs 10 and 11 the defendant acknowledges  
25 his understanding that he should not rely on the

1 possibility of a particular sentence and that the Court is  
2 free to reject any recommendations made by the parties and  
3 sentence him up to the maximum penalties for the offense.

4 In paragraph 12 the defendant acknowledges that this  
5 is the only plea agreement in the case and that prior plea  
6 agreements have been rescinded.

7 Paragraph 13 contains the requirement that all plea  
8 agreements have to be approved by the U.S. Attorney and I  
9 can represent that this plea has been so approved, as  
10 indicated by my signature.

11 THE COURT: All right. Very good.  
12 Mr. Van Wagner, I'm going to start with you. Is that the  
13 agreement you have with the government?

14 MR. VAN WAGNER: Yes, sir.

15 THE COURT: Okay. There's a reference to prior  
16 plea agreements. Have all prior plea agreements been  
17 presented to Mr. Sweeney?

18 MR. VAN WAGNER: There was a precharging  
19 agreement at some point that was presented to him and it  
20 did vary in some ways.

21 THE COURT: Okay. There's no proposed plea  
22 agreement that was made that was not presented to  
23 Mr. Sweeney?

24 MR. VAN WAGNER: This is the one and only plea  
25 agreement, that's correct.

1 THE COURT: All right. Very good. Okay.

2 Mr. Sweeney, same question to you: is that the agreement,  
3 as Ms. Duchemin described it, is that consistent with your  
4 understanding of the agreement that you have with the  
5 government?

6 THE DEFENDANT: It is, Your Honor.

7 THE COURT: All right. Very good. I just want  
8 to go over one point. I always reiterate this when these  
9 come up. But in paragraph 3 there's a limited waiver of  
10 your rights to appeal. But you understand that you would  
11 have a right to appeal your conviction or your sentence  
12 under normal circumstances; you understand that that would  
13 be a right that you would have?

14 THE DEFENDANT: I do.

15 THE COURT: Okay. But as long as I sentence you  
16 to something that's either 24 months or less, you are  
17 agreeing that you will waive your right to appeal your  
18 conviction or your sentence?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. Very good. Okay.

21 MR. VAN WAGNER: May I interject for the Court's  
22 information --

23 THE COURT: Yes.

24 MR. VAN WAGNER: -- although I'm sure it's  
25 obvious, there is pending litigation. It does not direct

1     itself to the count that we intend to plead guilty to.

2                 THE COURT:   Yes.   This is a civil case involving  
3     Mr. Sweeney and some other related conduct that we were  
4     talking about?

5                 MR. VAN WAGNER:   There was a motion to dismiss of  
6     Count 1 and Count 3, but of course the government is  
7     agreeing to dismiss those at sentencing.   Again there's a  
8     plea and we'll follow it.   So I've explained all of that  
9     to Mr. Sweeney as well.   But that will no longer be an  
10    issue in the case, much less an issue for appeal.

11                THE COURT:   Okay.   Just so I understand your  
12    point, as it relates to the original indictment, you had  
13    filed a motion to dismiss Counts 1 and 3.

14                MR. VAN WAGNER:   Correct.

15                THE COURT:   And that has essentially been mooted  
16    by the superseding indictment.   And on the basis of this  
17    plea agreement in which the government is going to agree,  
18    assuming we complete the whole process here and take a  
19    plea and sentence Mr. Van Wagner (sic), at the time of  
20    sentencing the government is going to dismiss Count 1 and  
21    Count 3.

22                MR. VAN WAGNER:   And therefore we have not at  
23    this point and do not intend to file a renewed challenge  
24    to the counts in the superseding indictment.

25                THE COURT:   Yes.   Right.

1 MS. DUCHEMIN: So we didn't ask expressly for a  
2 waiver as to that issue because it didn't relate to the  
3 charge, what he's pleading guilty to. But it's certainly  
4 I think the parties' intention that he's not going to  
5 appeal anything related to statute of limitations.

6 THE COURT: Yes.

7 MR. VAN WAGNER: That's correct. I agree with  
8 that.

9 THE COURT: All right. Very good. Mr. Sweeney,  
10 do you agree with all that?

11 THE DEFENDANT: I sure do, yes.

12 THE COURT: Okay. All right. So Counts 1 and 3  
13 are going to be dismissed, assuming I accept the plea  
14 agreement and we get to sentencing. And so the challenges  
15 to those are mooted by the fact that the plea is on Count  
16 2 only. Okay. All right.

17 Mr. Sweeney, did anyone make any other promises to  
18 get you to plead guilty?

19 THE DEFENDANT: No, Your Honor.

20 THE COURT: Did anyone threaten or try to force  
21 you to plead guilty?

22 THE DEFENDANT: No, Your Honor.

23 THE COURT: Okay. And did anyone tell you that  
24 you're going to get some particular sentence in this case?

25 THE DEFENDANT: No, Your Honor.

1           THE COURT: Okay. And do you have any -- and I  
2 know that you've probably discussed the range of  
3 sentencing and the impact of the guidelines and all of  
4 that, which is of course a good idea to discuss. But do  
5 you have any reason to think that I will make a certain  
6 decision to give you a particular sentence in this case  
7 other than the fact that it will be within the statutory  
8 maximum of five years?

9           THE DEFENDANT: I understand that there's no  
10 agreement as to sentence.

11          THE COURT: Okay. Good. All right. And I'm  
12 entitled to look at your presentence report and make a  
13 fair evaluation. And regardless of what the guideline  
14 says, I can sentence you up to five years; do you  
15 understand that?

16          THE DEFENDANT: Sure. Yes.

17          THE COURT: All right. Now, also, you understand  
18 that once I accept your plea, you're not free to withdraw  
19 your plea of guilty, even if I don't accept any  
20 recommendations that the government says it's going to  
21 make; do you understand?

22          THE DEFENDANT: Yes, I understand that.

23          THE COURT: And there's not a lot of  
24 recommendations in here, but there is a recommendation  
25 that the government says that it would make, is that they

1 would recommend that you get maximum credit for acceptance  
2 of responsibility. That's the main recommendation in  
3 there. But you understand I'll consider that  
4 recommendation, but I don't have to follow that one  
5 either; do you understand?

6 THE DEFENDANT: Yes, I do understand.

7 THE COURT: And if I don't follow it, it doesn't  
8 give you a basis to withdraw your plea.

9 THE DEFENDANT: I understand.

10 THE COURT: All right. The next thing we have to  
11 do is determine that there's a factual basis for the plea.  
12 So I'm going to ask Ms. Duchemin to tell me, in summary,  
13 what the government would present if the case were to go  
14 to trial. And again when she's done, then I'm going to  
15 come back to you and Mr. Van Wagner and ask you to confirm  
16 that you agree that the government could prove those  
17 things. Ms. Duchemin.

18 MS. DUCHEMIN: Your Honor, had the case gone to  
19 trial, the United States would have introduced the  
20 following evidence, in summary, as it relates to Count 2  
21 of the superseding indictment:

22 The United States would have called Michael Casey and  
23 Joel Frank. They would have testified that they were  
24 business partners and co-owners with the defendant of  
25 three companies: Fairview Ridge, Fairview Ridge II, and



1 Fairview Ridge III. The defendant was the managing member  
2 and had control over the company's bank accounts.

3 Casey and Frank would have testified that in early  
4 2007, the defendant approached them about a way for the  
5 companies to make money. The defendant represented that  
6 he had a friend and legal client, Mark Gullickson, who  
7 needed some money, somewhere between 105,000 and 115,000,  
8 to fix up his mother's home prior to sale. The defendant  
9 proposed that the companies loan Gullickson money at an  
10 interest rate of 13%. Casey and Frank agreed. However,  
11 over the next two years, the defendant wrote himself  
12 checks totalling more than \$420,000 while representing  
13 that the checks were loans to Gullickson.

14 When Casey and Frank became concerned that Gullickson  
15 had not repaid any money on the loan and that the dollar  
16 amount of the loan had gone well beyond the original  
17 amount, the defendant told his business partners that  
18 Gullickson needed more money, that he had fallen on hard  
19 times, and that the defendant was going to guarantee the  
20 loan.

21 By 2011, Gullickson was still not paying on the loan  
22 and Casey asked to see a copy of the original promissory  
23 note. The defendant emailed a purported promissory note  
24 between the companies and Mark Gullickson. When he  
25 received the note, Mr. Casey became concerned that the

1 amount of the note was \$600,000 and that Gullickson's  
2 signature looked like the handwriting of the defendant.

3 The United States would have called Mark Gullickson,  
4 who would have testified that he did not sign the  
5 promissory note and never borrowed any money from the  
6 Fairview Ridge companies.

7 Through testimony and documentary evidence, the  
8 United States would have established that the defendant  
9 filed for Chapter 11 bankruptcy protection in the Western  
10 District of Wisconsin on February 14, 2013. The  
11 statements in his bankruptcy petition were made under  
12 penalty of perjury. In that document, rather than  
13 disclose the true nature of the debt to Fairview Ridge  
14 companies, the defendant falsely listed the debt as,  
15 quote, "loans to debtor," close quote.

16 During the course of the bankruptcy proceeding the  
17 trustee learned of the supposed loan to Mr. Gullickson and  
18 conducted a deposition of the defendant about the nature  
19 of the Gullickson loan as it related to his debt to the  
20 Fairview Ridge entities. During the deposition the  
21 defendant admitted under oath that he obtained  
22 unauthorized advances from the Fairview Ridge companies in  
23 the form of checks he wrote to himself for his own  
24 personal use. He admitted under oath that his business  
25 partners believed the money was being loaned to Mark

1 Gullickson, because that's what he represented to them.  
2 And the United States would have introduced an audio of  
3 the defendant's admissions.

4       Regarding materiality of the false statement, the  
5 U.S. Trustee would have testified that the reason that the  
6 nature of the debt is significant in the context of a  
7 bankruptcy proceeding is because legitimate debts are  
8 often dischargeable in bankruptcy, while debts created by  
9 embezzlement or fraud are not dischargeable.

10       In this case the government would have established  
11 that the defendant lied on his bankruptcy petition in an  
12 effort to deceive the trustee and the bankruptcy court  
13 about the nature of his debt to the Fairview Ridge  
14 companies and to conceal his prior criminal conduct.

15       We would ask the Court to take judicial notice that  
16 the Bankruptcy Code is found in Title 11 of the United  
17 States Code.

18       THE COURT: All right. Very good.

19 Mr. Van Wagner, I'll start with you. Can the government  
20 prove those things?

21       MR. VAN WAGNER: Yes, it can.

22       THE COURT: All right. Mr. Sweeney, same  
23 question to you: can the government prove those things?

24       THE DEFENDANT: Yes, Your Honor.

25       THE COURT: And, Mr. Sweeney, I'm just going to

1 ask you to tell me, in your own words, about the  
2 statements you made to the bankruptcy court regarding the  
3 nature of the obligation that you had to the Fairview  
4 companies, if not to why you did that.

5 MR. VAN WAGNER: You are referring to the  
6 schedules he filed, I presume?

7 THE COURT: Yes.

8 MR. VAN WAGNER: Okay.

9 THE DEFENDANT: I described them and then  
10 testified that they were loans.

11 THE COURT: Okay. When in fact they were  
12 something else?

13 THE DEFENDANT: When in fact they were as a  
14 result of an embezzlement.

15 THE COURT: Okay. And so why did you make that  
16 misrepresentation to the bankruptcy court?

17 THE DEFENDANT: I'm not sure, all these years  
18 later, but I surmise that I was concerned that they would  
19 look something like a legitimate loan, which is how I  
20 presented them.

21 THE COURT: Okay. And that was for the purpose  
22 of having those obligations discharged in the bankruptcy;  
23 am I understanding that right?

24 MR. VAN WAGNER: You can answer that. Answer it  
25 the way you've answered it to me. May I have a moment?

1 THE COURT: Yes.

2 (Discussion held off the record between defendant and  
3 counsel.)

4 THE DEFENDANT: I didn't do it for the purpose of  
5 discharge, because my filing was a Chapter 11, where I  
6 didn't ask the court for any discharge.

7 THE COURT: Okay. Well, tell me why then did you  
8 not simply describe them as an embezzlement then?

9 THE DEFENDANT: Because I felt it wasn't in my  
10 best interest to present them as that.

11 THE COURT: Okay. Because it --

12 THE DEFENDANT: It would look bad.

13 THE COURT: It would look bad.

14 MR. VAN WAGNER: I can help the Court with the  
15 fact that the government agrees on.

16 THE COURT: Okay.

17 MR. VAN WAGNER: The case was converted  
18 involuntarily to a Chapter 7.

19 THE COURT: Okay.

20 MR. VAN WAGNER: And I fully understand that, in  
21 reviewing the transcripts, the government certainly holds  
22 the view that the sincerity of his not seeking discharge  
23 could be called into question by lack of any apparent  
24 ability to pay. But as a practical matter, when it was  
25 filed as a Chapter 11, the request was to reorganize the

1 debt and it was converted involuntarily later by one of  
2 the debtors.

3 THE COURT: All right. Here's the issue I'm  
4 struggling with here: I'm satisfied that the  
5 misrepresentation was made intentionally to the bankruptcy  
6 court. I'm also satisfied that ultimately the  
7 misrepresentation was material. I don't know that it was  
8 material at the time the misrepresentation was made, but I  
9 don't know that that's really an element of the offense.

10 MR. VAN WAGNER: Well, I think that we agree that  
11 it was, because when he made the representation, it was  
12 intended to list it under the category of potentially  
13 dischargeable debts. If the Chapter 11 failed, those who  
14 know the bankruptcy laws, and Patrick did at that point,  
15 know that Chapter 11's aren't always granted and they  
16 can't be converted.

17 So as a practical matter, part of the proffer that  
18 the government has offered from the trustee is 100-percent  
19 accurate, and that is that it's important for debts to be  
20 listed accurately. Had he listed them as the proceeds of  
21 unlawful activity, that would have been the end of the  
22 Chapter 11 and it would have also been the end of any  
23 effort to reorganize.

24 THE COURT: All right. And what I'm trying to do  
25 is make sure that Mr. Sweeney acknowledges and admits, in

1 his own words, that he intentionally made a false  
2 representation in the bankruptcy court, and I think that  
3 that's been established. But I would also like, in an  
4 abundance of caution, to make sure that Mr. Sweeney also  
5 admits that he was intentionally making a material  
6 misrepresentation in the bankruptcy.

7 THE DEFENDANT: I believe it was material, as I  
8 sit here today, sure.

9 THE COURT: All right. Okay. All right.  
10 Ms. Duchemin, are you satisfied that we have an admission  
11 that establishes all the elements?

12 MS. DUCHEMIN: I do. The statute requires that  
13 the defendant made the statement with intent to deceive,  
14 and I believe that that's been established.

15 THE COURT: Okay. All right. Very good.  
16 Anything else I need to review before I ask Mr. Sweeney  
17 what his plea is?

18 MS. DUCHEMIN: No, Your Honor.

19 THE COURT: Okay.

20 MR. VAN WAGNER: No, Your Honor.

21 THE COURT: Mr. Van Wagner? Okay. Good. All  
22 right. Then I'm going to ask you, Mr. Sweeney, what is  
23 your plea to Count 2 of the superseding indictment?

24 THE DEFENDANT: I plead guilty to Count 2.

25 THE COURT: All right. Very good. On the basis

1 of this discussion with you and your attorney, on the  
2 basis of the record in the case as a whole, I'm satisfied  
3 that you've entered a plea knowingly and voluntarily, that  
4 you've done so after an adequate opportunity to consult  
5 with counsel, that you have done so with an understanding  
6 both of the nature of the charge and of the consequences  
7 of a plea of guilty. I'm also satisfied that there's a  
8 factual basis for the plea.

9       Accordingly, I find and adjudge you guilty of Count 2  
10 of the superseding indictment. I will accept the plea  
11 agreement conditionally pending a review of the  
12 presentence report.

13       All right. So we've got two more tasks: one is to  
14 set the dates for the sentencing and the disclosures and  
15 objection schedule in connection with that, but then also  
16 we need to determine Mr. Sweeney's release status.

17       MR. VAN WAGNER: May we have a discussion on the  
18 record about scheduling before you eke out the tentative  
19 dates?

20       THE COURT: By all means. But let's just deal  
21 with the release status. Ms. Duchemin, is there going to  
22 be an objection from the government to Mr. Sweeney's  
23 continued release?

24       MS. DUCHEMIN: No.

25       THE COURT: Okay. Then let's just deal with



1 that. Mr. Sweeney, I'll continue your release pending  
2 your sentencing on the same conditions that have governed  
3 your conduct prior to the plea agreement. So you're still  
4 bound by those conditions and I will continue your release  
5 upon those conditions. Let's talk about sentencing then.

6 MR. VAN WAGNER: May it please the Court. I'm  
7 going to at this point, having had a frank and extended  
8 conversation with the prosecutor yesterday, as fair as I  
9 want to be to the prosecutor, ask if they could state what  
10 our agreement is and how we want to approach this and  
11 suggest this to the Court.

12 MS. DUCHEMIN: Your Honor, based on my  
13 conversations with Mr. Van Wagner and based on my review  
14 of the evidence, I think there's a genuinely complex  
15 restitution issue here, because there's some -- there's  
16 lots of issues, to put it mildly. And so I guess  
17 Mr. Van Wagner and I would request one of two things,  
18 either which I think is fine with both parties --

19 THE COURT: Okay.

20 MS. DUCHEMIN: -- one of which is that the Court  
21 set a sentencing and then simply just plan ahead that  
22 we're going to probably have a separate restitution  
23 hearing that we're going to have to take some evidence  
24 on --

25 THE COURT: All right.

1 MS. DUCHEMIN: -- or if the Court would like to  
2 set out sentencing a bit in the hopes that we can come to  
3 an agreement.

4 I think Mr. Van Wagner and I are on the same page as  
5 to what the issues are. So at least I think we can  
6 negotiate, you know, to the end of trying to come up with  
7 a number. Whether or not we're going to be able to come  
8 up with a number without evidence, I don't know. So one  
9 of those procedural mechanisms would I think -- either one  
10 would be fine.

11 THE COURT: How much time do you think you're  
12 going to need?

13 MR. VAN WAGNER: May I make --

14 THE COURT: I mean, it's appealing to me to be  
15 able to do one hearing and we could do the restitution  
16 hearing and the sentencing hearing at the same time. I've  
17 been kind of assuming, I'll take the government's  
18 imprimatur on this, but I'm kind of assuming that  
19 Mr. Sweeney is a candidate for self-surrender, and so I  
20 don't know if there's an urgency to get him to begin  
21 serving a sentence of incarceration, if that's coming. I  
22 don't know that that's critical. So if we delay the  
23 sentencing, I don't see that there's a whole lot of damage  
24 to society or the interests of government.

25 MS. DUCHEMIN: I concur.

1 THE COURT: But if that's your perspective, then  
2 it seems efficient to the Court do it in one hearing.

3 MR. VAN WAGNER: And, Your Honor, we -- is it  
4 okay if I stand?

5 THE COURT: Whatever. Make yourself comfortable.

6 MR. VAN WAGNER: I'd prefer it. That's my  
7 parochial schooling upbringing.

8 THE COURT: Yeah.

9 MR. VAN WAGNER: It would be our suggestion that  
10 if the Court sets the second of those two options, which  
11 is a longer date for sentencing, the counsel for the  
12 government and I have talked about sitting down and  
13 identifying what is a very complex picture, and  
14 identifying the things we can stipulate to and agree to  
15 and avoid testimony on foundationally or factually, and  
16 then identify and narrow the issues that remain.

17 I suspect there's still going to be the need for a  
18 hearing and it's probably going to involve witnesses and  
19 evidence. And so it would be our suggestion, since a lot  
20 of that information may also play into, to a certain  
21 extent, the Court's decision on sentencing, it makes sense  
22 to have that hearing ahead of time, set the sentencing  
23 further down, and set a date for the hearing and give us  
24 time, as we said, to work throughout whatever we can.

25 MS. DUCHEMIN: Or do it on the same day.

1 MR. VAN WAGNER: Well, or the same day,  
2 although --

3 THE COURT: Switching them doesn't serve the  
4 interests and efficiency. I still have to do two  
5 hearings. But if the same day works, I would just give  
6 you enough time to get it together so that we can settle  
7 on -- we do one hearing, it's going to be longer than a  
8 normal sentencing.

9 MR. VAN WAGNER: You're right. And the only  
10 thing I think neither of us is able to do today is predict  
11 how much time we'll need because of the work I've outlined  
12 for you we plan to do in advance. So I suggest that we  
13 pick a day that you have pretty free and start early.

14 THE COURT: You're making me nervous. I was  
15 thinking a half a day would cover it.

16 MR. VAN WAGNER: It could be.

17 THE COURT: All right. I get it. You don't know  
18 yet what we don't know. We have the unknown unknowns  
19 problem. And so I'm open to -- I will tell you that under  
20 ordinary circumstances, I would hope that we could get the  
21 sentencing hearing, with the restitution, done in half a  
22 day, even that seems ample to me. But again I don't know  
23 really what all of the issues are. And my experience is  
24 when a sentencing hearing goes for more than four hours,  
25 people get kind of tired and it seems to get past the

1 point of diminishing returns on a lot of issues.

2 But we're just trying to answer questions that it  
3 would be impossible for us to answer, so tell me how much  
4 more time you need. Let me just tell you: under ordinary  
5 circumstances, with the usual schedule, based on what  
6 Mr. Stieve has told me, we would be looking at sentencing  
7 in the week of October 9th, and so that's the normal  
8 trajectory. That doesn't build in any extra time to deal  
9 with the restitution problem. So what are you thinking:  
10 are you thinking another week? are you thinking another  
11 month?

12 MR. VAN WAGNER: May I address that first?

13 THE COURT: By all means.

14 MR. VAN WAGNER: I have a homicide trial on the  
15 second full week of August -- on the third full week of  
16 October that will occupy my time or much of it.

17 THE COURT: I'm assuming we're going beyond that  
18 because you've asked for some more time.

19 MR. VAN WAGNER: I'm suggesting to the Court that  
20 one month would be the minimum amount of time. But if  
21 we're going to sit down and go through and try to achieve  
22 stipulations, there's a number of sets of documents that  
23 we may not yet be in possession of that may or may not  
24 relate. It's a complicated corporate situation, financial  
25 situation. So I would suggest at least 30 days and

1 somewhere from 30 to 60 after that.

2 THE COURT: Let's start with 30 days. If I'm  
3 reading between the lines here, you're telling me that  
4 there is some documents you need to get and you don't know  
5 how long it will take you to get them. I think within a  
6 month -- frankly, you should be able to do your work in a  
7 month. But if you have to wait for documents, maybe I  
8 have a little bit of sympathy for that, but 30 days is  
9 what I have in mind.

10 MR. VAN WAGNER: My reference to the homicide  
11 trial was to indicate that a good chunk of that month I  
12 won't even be available.

13 THE COURT: Yeah. So, anyways, I'll give you  
14 time after that. But certainly in the lead-up to your  
15 homicide trial, you can take the steps to collect the  
16 documents you need.

17 MR. VAN WAGNER: Absolutely.

18 THE COURT: So I'm looking at, like, the week of  
19 November 13th. It could be as early as -- the following  
20 week is the Thanksgiving week, so let's avoid that. Let's  
21 look at -- how about Friday, the 17th of November? I'll  
22 give the defendant the first crack at that.

23 MR. VAN WAGNER: Well, Your Honor, that will give  
24 me incentive to be speedy, because that's also the day I  
25 leave, late in the afternoon, to go to deer camp.

1 THE COURT: Gives everyone an incentive.

2 MS. DUCHEMIN: Your Honor --

3 THE COURT: Yes.

4 MS. DUCHEMIN: -- is it possible to do it on the  
5 16th?

6 THE COURT: It would. Let's see. I've got a --  
7 it looks like I have a court trial starting at nine.

8 MS. DUCHEMIN: Okay. I can -- I'd prefer not to  
9 do the 17th, but I can do the 17th. So we can leave it  
10 the 17th, that's fine.

11 THE COURT: All right. Let's do it the 17th.  
12 I'm sorry to shoehorn you into the 17th, but --

13 MS. DUCHEMIN: That's okay.

14 THE COURT: November 17th, 2017. We will start  
15 at 9 a.m. I will block out the rest of the day, hoping  
16 that the afternoon and the demands of Mr. Van Wagner's  
17 travel to his deer camp will give us all an incentive to  
18 wrap it up earlier than the end of the day. Where do you  
19 hunt?

20 MR. VAN WAGNER: Not far enough away. In the  
21 Dells -- well, in the woods outside the Dells. I don't go  
22 to Jellystone Park.

23 THE COURT: Yeah. You can get up early and get  
24 there Saturday morning before dawn, but you want to get up  
25 there and --

1 MR. VAN WAGNER: I'm the camp cook, so I'll have  
2 to be there by midnight.

3 THE COURT: All right. Good. That will be when  
4 we do it. Let's dovetail this back to the needs of the  
5 probation office. So that's extended considerably. Your  
6 original proposal, Mr. Stieve, was that you would have the  
7 report available on September 1st. This gives you a  
8 little bit more leeway.

9 So let me take some input from the parties. When  
10 would you like the report? And of course it probably  
11 won't deal with the restitution issues that are the delay.  
12 So I want to give Mr. Stieve, since we're moving this out,  
13 I'll give him more flexibility to work this into his  
14 normal work flow. So, Mr. Stieve.

15 MR. STIEVE: Thank you, Your Honor. I have the  
16 standard 35 days disclosure prior to sentencing would take  
17 us and put us at on or about October 6th for a disclosure  
18 date, objections the 20th.

19 THE COURT: Okay. Let me ask you this: Are  
20 there other complications in the sentencing beside the  
21 restitution?

22 MS. DUCHEMIN: There are. And I was just going  
23 to say, so that we're not just, you know, leaving the  
24 Court totally in the dark here: one of the issues that is  
25 going to come up, I anticipate, is that when the partners



1 discovered the fraud, Mr. Sweeney was pretty quickly  
2 thereafter not a part of the business anymore. And I  
3 anticipate that perhaps one of the arguments Mr. Sweeney  
4 may try and raise is that his interest in the business,  
5 the value of that interest, should be offset against what  
6 he embezzled.

7 THE COURT: Okay.

8 MS. DUCHEMIN: And there's even another layer of  
9 complexity on that because his interest is  
10 cross-collateralized as well and was being foreclosed on  
11 at the time by the State Bank of Cross Plains, so whether  
12 or not at the time of all of this he even owned the  
13 interest anymore or what the value of it is. And frankly,  
14 you know, the parties, understandably so, have been  
15 focusing on the elements of the offense and not, you know,  
16 all these layers of restitution, so that's kind of what we  
17 have to deal with.

18 I think that it is going to almost come down to a  
19 more conceptual issue than it is going to be is it, you  
20 know, \$14.21 or is it \$10,000, or whatever. I don't think  
21 it's going to be a numbers issue as much as the Court is  
22 going to have to decide, are you willing to offset and  
23 what does everybody think the relative value of that  
24 business interest was at the time. Does that make sense?

25 THE COURT: It does, and I appreciate that, which

1 leads to another question. But it suggests to me that  
2 Mr. Stieve's work is not unduly complicated.

3 MS. DUCHEMIN: Right.

4 THE COURT: And so the only question I have is  
5 whether we should be dealing with the guideline -- by the  
6 way, does this affect the loss amount at all?

7 MS. DUCHEMIN: I don't believe.

8 MR. VAN WAGNER: No. The loss or attempted loss  
9 remains the same. It clearly -- I think the prosecutor  
10 has very well articulated the principal issues that we  
11 have to sort through.

12 THE COURT: So bottom line is that for the things  
13 that Mr. Stieve has to address, the restitution issue does  
14 not complicate that --

15 MS. DUCHEMIN: I agree.

16 THE COURT: -- and so that can be -- I don't see  
17 any reason for it to be done -- this is just kind of my  
18 perspective here as well is I don't want to read a long  
19 presentence report 30 days before I do a sentencing. I'll  
20 forget it all by then, so I always do that kind of towards  
21 the end. So we might as well address the objections and  
22 everything a little bit closer to the actual sentencing  
23 hearing, okay, so that's my --

24 MS. DUCHEMIN: That makes sense.

25 THE COURT: So the presentence report will be

1 available October 21st and October 20th will be the date  
2 for your objections. Does that work for you?

3 MR. VAN WAGNER: Say those dates again.

4 THE COURT: October 6th will be the date the  
5 presentence report is available. That makes your  
6 objections due on October 20th.

7 MR. VAN WAGNER: Yeah. I thought you, first  
8 time, said the 21st. The 6th and the 20th.

9 THE COURT: The 6th and the 20th for objections.  
10 Okay. Then on the restitution issue, I guess the bottom  
11 line question is are you going to present expert evidence  
12 on this as well. What am I going to have to digest?

13 MS. DUCHEMIN: That's a very good question. And  
14 admittedly, I'm certainly no business valuation expert  
15 myself. And trying to figure out to what extent his  
16 interest was in the process of being taken by the bank is  
17 also an issue that we have to try and figure out. So that  
18 the answer is, unfortunately, I don't know.

19 THE COURT: All right.

20 MR. VAN WAGNER: I can say probably.

21 THE COURT: Okay. I'm not surprised. Now, the  
22 next question is -- this isn't the kind of question that  
23 I'm used to answering on the fly at a hearing when you  
24 just lay it out for me -- so do you anticipate briefing  
25 the issue ahead of time?

1 MR. VAN WAGNER: I would say we anticipate  
2 outlining it. While it's conceptual, I'm not sure it's a  
3 legal issue. As much as it is a, as the prosecutor says,  
4 conceptual issue, that depends upon the various things  
5 that the prosecutor said.

6 But I think it would be extremely helpful that the  
7 Court had from us, either by stipulation or by competing  
8 statements of the financial picture, what we believe is  
9 there to look at in the context of the overarching  
10 question, and that is the value of Mr. Sweeney's corporate  
11 ownership -- what it was is obviously a complicated  
12 issue -- but then also whether any of that is an offset to  
13 a restitution.

14 THE COURT: Right.

15 MR. VAN WAGNER: In short, there's never been an  
16 accounting. My client technically would have the right to  
17 go back in the civil setting and pursue an accounting.  
18 What we hope to do is short circuit that and put it before  
19 you for purposes of restitution. So I think summaries  
20 would be really helpful for you and outlines.

21 THE COURT: Also, if I'm going to have an expert  
22 presentation, I'd like to be prepared in advance so I can  
23 ask questions of the expert that are informed rather than  
24 just getting the tutorial in an hour and being asked to  
25 decide on that basis.

1 MS. DUCHEMIN: Right. What I sort of envisioned,  
2 Your Honor, is that the parties submit something which  
3 is -- I think you're going to sort of find yourself in one  
4 of two conceptual camps. And so that the parties can  
5 submit --

6 THE COURT: If I understand, the conceptual  
7 dilemma here is I offset or I don't offset.

8 MS. DUCHEMIN: Right.

9 THE COURT: Okay.

10 MS. DUCHEMIN: And so I think the parties could  
11 help the Court out by essentially laying out: look, if you  
12 find at the hearing these facts, this would be the result;  
13 if you find these facts, this would be the result; such  
14 that then the Court just has to choose the two options and  
15 can do so more easily on the fly.

16 THE COURT: Okay. Then I would like -- and you  
17 tell me if you need a briefing sequence, but what I'm  
18 prepared to propose, because it's kind of efficient for  
19 the parties, is that you each just give me your side of  
20 the equation at the same time a week before the sentencing  
21 hearing.

22 MR. VAN WAGNER: I think that's perfect.

23 MS. DUCHEMIN: I agree.

24 THE COURT: Yeah. Okay. We don't have to turn  
25 it into a patent case. But if you just give me your

1 submissions a week before, I can digest that and be  
2 prepared for the hearing.

3 MS. DUCHEMIN: Very good.

4 THE COURT: In connection with that, would you  
5 also then indicate what you intend to present to me at the  
6 hearing, so I know what witnesses to expect then?

7 MS. DUCHEMIN: Yes. And we'll try and give the  
8 Court a better sense of how long we would anticipate any  
9 individual witness would testify --

10 THE COURT: Okay.

11 MS. DUCHEMIN: -- for the Court's calendar.

12 THE COURT: Good. And none of this forecloses  
13 you reaching agreement on as many things you reach  
14 agreement on, so hopefully you can use this time for that  
15 as well.

16 Can you also, by that same week deadline, give me  
17 everything else that you want me to consider in connection  
18 with the sentencing, so you want to do a sentencing memo,  
19 so I can dig in one time? Anything else you want --  
20 letters in support, sentencing memoranda -- if I get those  
21 a week in advance, that would -- I'll have the whole  
22 package for me in advance of the hearing a week before.

23 MR. VAN WAGNER: Yes.

24 THE COURT: Okay.

25 MR. VAN WAGNER: In my last sentencing before

1 you, I didn't receive letters until two days before, which  
2 is why they came --

3 THE COURT: And ordinarily I'm fine. Two days  
4 before is about when I prepare for a sentencing. So no  
5 need to, you know, rush you ahead of when I'm really  
6 working on it, so that's why the two-day rule is usually  
7 what I follow. This one is more complicated.

8 And I do find it useful when I have some recognizable  
9 difficulty in a sentencing. Here it's restitution, but  
10 sometimes there's a guideline issue. Sometimes it's just  
11 better for me to be able to have that in advance and get  
12 the parties' positions on it. Sometimes even an advance  
13 ruling on an issue is useful for the sentencing  
14 presentations.

15 But in this case, what I think really makes sense is  
16 what we've booked out: give you time to work on  
17 restitution so we can do one hearing and try to work it  
18 all out and resolve it in one gulp, even if it's a long  
19 gulp.

20 Those are all my concerns. Is there anything else we  
21 need to address today?

22 MS. DUCHEMIN: No, Your Honor.

23 MR. VAN WAGNER: Not from the defense.

24 THE COURT: All right. Very good. We'll hear  
25 from you in a few weeks and then see you shortly of that.

1 (Adjourned at 1:51 p.m.)

2 \*\*\*

3 I, CHERYL A. SEEMAN, Certified Realtime and Merit  
4 Reporter, in and for the State of Wisconsin, certify that  
5 the foregoing is a true and accurate record of the  
6 proceedings held on the 21st day of July, 2017, before  
7 the Honorable James D. Peterson, Chief Judge of the  
8 Western District of Wisconsin, in my presence and reduced  
9 to writing in accordance with my stenographic notes made  
10 at said time and place.

11 Dated this 12th day of August, 2017.

12  
13  
14  
15  
16 /s/

17 Cheryl A. Seeman, RMR, CRR  
18 Federal Court Reporter  
19  
20  
21  
22

23 The foregoing certification of this transcript does not  
24 apply to any reproduction of the same by any means unless  
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